IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

GOPAL AND OTHERS. V. THE STATE OF RAJASTHAN

S. B. CIVIL REVISION PETITION NO.732/2003, against the order dated 27.01.2003, passed by Shri Mahesh Mangtani, RJS, Civil Judge (Junior Division), Makrana in Ijray Application No.11/2000 (Gopal & Others v. State)

DATE OF ORDER: : JANUARY 19, 2007

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.R.R.Nagori, for Petitioners.
Mr.H.R.Soni, Additional Government Advocate, for Respondents.

REPORTABLE. **BY THE COURT:**

Heard learned counsel for the parties.

The present revision petition is against the order dated 27th January, 2003, passed by the executing court Civil Judge (Junior Division), Makrana, District – Nagaur.

The facts of the case, in brief, are that as back as in the year, 1981, precisely on 25th August, 1981, plaintiff filed the suit for eviction of defendants-tenant the State for getting possession of the rented building which was rented out by the

plaintiff to defendant for running school. The suit was decreed after about almost more than 12 years on 8th February, 1994. The operative portion of the decree is as under :-

> "(1) वादीगण वादग्रस्त परिसर का खाली कब्जा प्रतिवादी से प्राप्त करेंगे। प्रतिवादी को तारीख डिक्री से दो माह का समय वादग्रस्त परिसर का खाली कब्जा वादीगण को संभालने हेतु दिया जाता है।
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> (2) वादीगण प्रतिवादी से माह जुलाई, अग्रस्त 1981 की अवधि का दो माह का किराया रूपये 60/- रूपये प्राप्त करेंगे और तारीख दायरी दावा से वादग्रस्त परिसर का खाली कब्जा प्राप्त होने तक 30/- रूपये प्रतिमाह की दर से मध्यवर्ती लाभ भी प्राप्त करेंगे।
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> (3) प्रकरण की तथ्यों एवं परिस्थितियों को देखते हुये पक्षकारान वाद व्यय अपना अपना वहन करेंगे।"

The decree-holders-plaintiffs submitted the Execution Petition No.22/96 in the year, 1996. In the said execution proceedings, a compromise was submitted by the decree-holders and the District Education Officer, Nagaur, on 23rd October, 1997 on behalf of the State the judgment-debtor. The Executing Court, on the basis of the said compromise, disposed of the Execution Petition No.22/96 by order dated 23rd October, 1997. The terms of the agreement/compromise between the parties dated 23rd October, 1997 are as under :-

"1. इस इजराय में विवादग्रस्त संपति जिसके पाडौस इजराय प्रार्थना पत्र में वर्णित है, को खली कर इसका कब्जा मदयूनान डिक्रीदारान को दिनांक 15.5.98 तक दे देंगे। अन्यथा स्कूल भवन तैयार होते ही कब्जा दें देगे। इस विद्यालय का निर्माण राजकीय उच्च माध्यमिक विद्यालय (छात्र) मकराना के कैम्पस में प्रस्तावित भूमि पर होगा।

2. डिक्रीदारान विवादग्रस्त संपति को खाली कराने हेतु मदयूनान विभाग को मुआवजा के तौर पर छात्र कल्याण हेतु आठ लाख रूपये की राशि सहभागी योजना के तहत स्कूल बिल्डिंग इस राजीनामा के साथ संलग्न मानचित्र अनुसार बनाने हेतु देंगे।

3. मदयूनान इस स्कूल का नाम सेठ बद्रीनाराण बालकिशन तोषणीवाल राजकीय उच्च प्राथमिक विद्यालय संख्या 2, मकराना रखेंगा तथा इस स्कूल को इसी नाम से सम्बोधित किया जायेगा। विद्यालय के नाम स्वीकृति की कार्यवाही जिला शिक्षा अधिकारी,नागौर निदेशालय से प्राप्त करेंगे।

4. डिक्रीदारान मुआवजा की राशि छात्रहित में किश्तों में अदा करेंगा, जिसकी प्रथम किश्त रूपये दो लाख दिनांक 15.11.1997 दूसरी किश्त रूपाये एक लाख दिनांक 24.12.1997 तथा तीसरी किश्त रूपये दो लाख दिनांक 25.1.1998 चौथी किश्त रूपये दो लाख दिनांक 25.2.1998 तथा पांचवी एवं अन्तिम किश्त रूपये एक लाख दिनांक 25.3.1998 को देय होगी। डिक्रीदारान उपरोक्त राशि के ड्राफट नगर विकास समिति , मकराना के नाम पर बना कर देगा।

5. नगर विकास समिति, मकराना इस स्कूल का कार्य सत्र समाप्ति के पहले यानि 1997-98 के पूर्व करायेगी व नगर विकास

समिति से निर्माण कार्य हेतु एक सदस्य शिक्षा विभाग की तरफ से प्रधानाध्यापक राजकीय उच्च प्राथमिक विद्यालय नम्बर दो, मकराना होगा व सेठ तोषणीवाल जी की तरफ से श्री सीताराम जी भक्कड, बोरावड वालेंका नाम रहेगा।

6. नगर विकास समिति मकराना व शिक्षा विभाग प्रस्ताव के अनुसार राज्य सरकार की सहभागी योजना के अन्तर्गत कार्य करायेगी।"

It is pertinent to mention here that in the compromise dated 23rd October, 1997, it has not been mentioned how the Execution Petition No.22/96 is required to be dealt with. It appears and according to the learned counsel for the non-petitioners-State also, there was application along with the compromise, wherein both the parties requested that the execution petition may be dismissed in the light of the compromise and after recording the compromise, therefore, the order dated 23rd October, 1997 was passed by the Executing Court.

The terms of the compromise dated 23rd October, 1997, referred to above, provided that the decree-holders will pay Rs.2,00,000/- by 15th November, 1997 and, thereafter, shall pay Rs.1,00,000/- by 24th December, 1997, Rs.2,00,000/- by 25th Januay,1998 and last and final instalament of Rs.1,00,000/- will be paid by the decree-holder-plaintiffs on 25th March, 1998. It is

not in dispute that the decree-holder plaintiffs gave one cheque for amount of Rs.2,00,000/- on 15th November, 1997 in place of demand draft in terms of Condition No.4 of the compromise dated 23rd October, 1997. The decree-holders submitted present execution petition No.11/2000, on the grounds that the judgment-debtor is not obeying the terms and conditions of the compromise dated 23rd October, 1997 and apart from that, the compromise dated 23rd October, 1997 was beyond the terms of the decree and, therefore, is illegal and not bineing upon the decree-holders. It is also submitted that the judgment-debtor has shifted the place of the construction of new building contrary to the Condition No.2 of the agreement dated 23rd October, 1997. In sum and substance, the contention of the decree-holders plaintiffs was that the decree-holders have right to execute the original decree dated 8th February, 1994, despite the comprise dated 23rd October, 1997.

The Judgment-debtor – State submitted reply in the execution petition, but, according to the lerned counsel for the respondents, no formal objection petition under O.47, CPC, was submitted by the judgment-debtor. The Executing Court vide order dated 27th January, 2003, held that the parties can enter into compromise, even after the decree and in terms of the

compromise, the decree can be modified. The Executing Court rejected the contention of the decree-holders that the compromie was beyond the terms of the decree and, therefore, illegal. While dismissing the execution petition, the Executing Court observed that in the decree dated 8th Feburary, 1994, it has been provided that the judgment-debtor shall deliver the possession of the suit property to the decree-holders and in the compromise dated 23rd October, 1996 also, it has been provided that the judgment-debtor will deliver the possession of the suit property to the decree-holders. The Executing Court held that the decree-holders have not complied with the terms of the compromise dated 23rd October, 1997 and for this, one of the reasons given by the Executing Court is that the decree-holdrs gave a cheque of Rs.2,00,000/-, instead of making payment by Demand Draft. For this, the Executing Court observed that the demand draft is pre-paid, whereas the person issuing cheuque is not dound to pay the cheque amount. The Executing Court rejected the decree-holders objections about the shifting of the place of new school building on the ground that the decree-holders were duly informed about the new place of school and the representative of the decree-holders was present in the function of the foundation laying down for construction of the school. The Executing Court observed that in terms under the

agreement dated 23rd October, 1997, it is provided that the judgment-debtor will deliver the possession of the suit property after construction of the school building. Therefore, the Executing Court held that the decree-holders cannot execute the decree.

It will be worthwhile to mention here that after holding so, as mentioned above, the Executing Court, in operative part of the order, mentioned that both the parties shall proceed to comply with the terms of the compromise submitted in Execution Case No.22/96. The Executing Court also declared that in case in future, the decree-holders will comply with the terms of the compromise and if the judgment-debtors fail to comply with the terms of the compromise, the decree-holders shall be entitled to submit another execution petition for execution of the decree.

The decree-holders, being aggrieved against the order dated 27th January, 2003, have preferred this revision petition.

Leanred counsel for the decree-holders petitioners vehemently submitted that the non-petitioner judgment-debotr failed to comply with the terms of the agreement dated 23rd October, 1997 and the Director, Primary Education of the State

of Rajasthan, has issued an order dated 6th Feburary, 1998 and by that, the said Authority unilaterally altered all terms and conditions of the compromise. The conditions imposed by order dated 6th February, 1998 by the Director, Primary Ecucation, Government of Rajathan, are as under :-

> "1- वर्तमान में विद्यालय का नामकरण राजकीय उच्च प्राथमिक विद्यालय नम्बर दो, मकराना (नागौर) रहेगा। दानदाता द्वारा निर्मित भवन की भूमि सहित अनुमानित लागत का 51 प्रतिशत योगदान करने पर नामकरण किया जा सकेगा।
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> 2- शाला का वर्तमान किराये का भवन नवनिर्मित भवन में विद्यालय शिफ्ट होने पर विधिवत अधिग्रहण संबधी सभी औपचारिकताओं की पूर्ति के बाद रिक्त कर भवन मालिक को सुपुर्द कर दिया जावेगा।
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> 3- डिक्रीदारान समझौते के अनुसार मुआवजें के तौर पर आठ लाख रूपये की राशि किश्तों में निर्धारित तिथि तक उपलब्ध करायेंगे।
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> 4- भवन का निर्माण सहभागी योजना के तहत सहयोग लेकर अनुमोदित नक्शे के अनुसार कराया जावेगा। निर्माण कार्य नगर विकास समिति मकराना के माध्यम से कराया जा सकेगा। इसमें एक सदस्य नगर विकास समिति एवं एक सदस्य विभाग की तरफ से एवं श्री तोषणीवाल की ओर से सीता राम मक्कड़ बोरावड वाले होंगे।
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> 5- भवन निर्मित होने पर विधिवत् दानपत्र विभाग के पक्ष में लिखाना होगा। दानपत्र विभाग के पक्ष में लिखे जाने पर यह भवन विभाग की संपति होगा।

6- भवन का उपयोग अध्ययन/अध्यापन हेतु ही किया जावेगा।

7- भविष्य में क्रमोन्नत होने या आवश्यकता होने पर दानदाता द्वारा अतिरिक्त निर्माण कराया जावेगा। असमर्थता प्रकट करने पर अन्य दानदाता से निर्माण कराये जाने पर ऐसे अन्य दानदाता को अपने द्वारा निर्मित भवन भाग पर शिलालेख लगाने की छुट होगी।"

Learned counsel for the petitioners further submitted that in the compromise dated 23rd October, 1997, it is specifically provided that the decree-holders shall be entitled to take possession of the suit property and the judgment-debtor shall deliver the possession of the suit property to the decree-holders. It is also provided that the possession will be delivered by 15th May, 1998. However, it is also provided that otherwise, when the building will be constructed, as mentioned in para 1 of the compromise dated 23rd October, 1997, the possession of the suit property will be delivered by the judgment-debtor to the decree holder. But for that, learned counsel for the petitioners submitted that the time given in subsequent para upto the construction of new school building is not indefinite time and that has been made specifically upto the academic session period of the year, 1997-98 by incorporating Condition No.8 in the agreement dated 23rd October, 1997. Therefore, according to the learned counsel for the petitioners, the court-below has

committed serious error of law by drawing wrong inference from the admitted and proved facts and wrongly held that the decree-holders, at present, cannot execute the decree, because of the compromise dated 23rd October, 1997. It is also submitted that the petitioners – decree-holders have been declared defaulter in complying with the compromise dated 23rd October, 1997, merely on the ground that the decree-holders offered payment of Rs.2,00,000/- on due date by giving cheque instead of demand draft.

Learned counsel for the petitioners vehemently submitted that in the alternative, the compromise dated 23rd October, 1997 is beyond the terms of the decree and, therefore, this compromise cannot be given effect to.

Learned counsel for the petitioners relied upon the judgments of this Court in the case of The State of Rajasthan & Others v. Jeev Raj Singh (RLW 1997 (3) Raj.1991), Kanmal v. Hukamchand (1996 RLW page 62 (DB)) and Rameshwar Das Gupta v. Stat of U.P. (AIR 1997 SC 410).

Learned counsel for the petitioners also tried to refer one communication received by the petitioners from the officers of the non-petitioner State, wherein it has been stated that the 'Sahbhagita Scheme', under which the new building was to be

constructed, has been abolised by the State. However, in the said communication, it has been said despite abolition of said Scheme, the amount will be made available for the purpose of raising construction of the school by taking fund from VI plan. It is also submitted that the non-petitioners put different conditions and put the additional burden also and as per the order dated 6th Feburary, 1998, it is clear that the Authorities want to dictate their terms and are not interested in obeying the agreement dated 23rd October, 1997.

Learned counsel for the non-petitioners vehemently submitted that the Executing Court considered the contentions raised by both the parties and examined the terms of the decree as well as the compromise dated 23rd October, 1997 and, thereafter, held that the petitioners have violated the agreement dated 23rd October, 1997 and, therefore, there is no jurisdictional error in the impugned order and, consequently, this Court has no jurisdiction to interfere in the order dated 27th January, 2003, on any grounds. It is also submitted that after the decree, the decree can be completely settled or by compromise the decree can be altered or modified. Not only this, according to the learned counsel for the non-petitioners, the petitioners, with their open eyes, entered into the compromise

dated 23rd October, 1997 and, thereafter, according to them, they paid Rupees two lacs by cheque and that compromise was recorded by the Court as required under O.22, R.2, CPC, therefore, the petitioners cannot challenge the compromise dated 23rd October, 1997. It is also submitted that the order which was passed in Execution Case No.22/96 cannot be challenged by the decree-holders in the present execution petition.

Learned counsel for the non-petitioners vehemently submitted that there is a reference of the order of the Director, Primary Education, Bikaner dated 6th February, 1998, but that order appears to has not been placed before the Executing Court and, therefore, the Executing Court passed the order dated 27th January, 2003, on the basis of the material available on record. So far as 'Sahbhagita Scheme' is concerned, learned counsel for the non-petitioners vehemently submitted that the petitioners cannot rely upon the documents which were not in existence before 27th January, 2003 when the impugned order was passed and the document which had not been placed on record before the Executing Court.

Learned counsel for the non-petitioners, in addition to

support the order of the court-below, submitted that the Executing Court itself permitted the decree-holders to execute the decree by the same impugned order, in case the compromise is obeyed by the decree-holders and is not obeyed by the judgment-debtor. Therefore, in case the decree holders are of the view that the judgment-debtor has not obeyed the terms and conditions of the compromise, then he can certainly submit another execution petition to execute the decree.

Learned counsel for the non-petitioners relied upon the judgment of the Apex Court in the case of Lakshmi Narayanan v. S.S.Pandian (AIR 2000 SC 2757), wherein the Hon'ble Apex Court very specifically held that the parties can enter into compromise, even after the decree and that cvompromise can be recorded by the Executing Court under the provisions of O.21, R.2, CPC, and in case the agreement is recorded as per O.21, R.2, CPC, then, that compromise is required to be given due weightage.

Learned counsel for the non-petitioners also submitted that the compromise dated 23rd October, 1997 is within the ambit of the litigation as well as the decree dated 8th February, 1994. Even if some conditions have been incorporated which may not

be covered under the decree or litigation between the parties, still, the Court has jurisdiction to pass the decree with respect to the subject-matter which are not involved in the litigation, therefore, by applying scheme analogy, the parties can enter into compromise in execution and may put additional burden upon one himself.

Learned counsel for the non-petitioners also relied upon the judgment of the Bombay High Court in the case of Prataprai Trumbaklal Mehta v. Jayant Nemchand Shah (AIR 1992 Bombay P.149) and Badriprasad v. Mallubhai (AIR 1994 M.P.37).

I considered the submissions of the learned counsel for the parties.

The core question involved in this revision petition is whether the Executing Court committed jurisdictional error and the order of the Executing Court is perverse so as to give jurisdiction to this Court to interfere in the order dated 27th January, 2003, if the strict view about the jurisdiction of the High Court under Section 115, CPC, is taken. Therefore, without entering into this controversy what is the jurisdcition of the High Court in a matter while examing the orders of the trial Court, it

will appropriate to first examine the impugned order in the light of the said strict restriction upon the jurisdiction of the High Court.

The facts are not in dispute that the plaintiffs filed the suit for eviction of the tenant and about 25 years ago from now. The suit was decreed about 13 years ago from now. The judgment-debtor is the State. The property involved is a school building. In the decree, it is provided that the judgment-debor shall deliver the possession of the suit property to the decree-holders within a period of two months, obviously from 8th February, 1994. The decree also provides payment of rent at the rate of Rs.60/-, till the premises are vacated. As law permits, the judgment-debtors are not bound by the dictate of the Court, the order given in the decree and, therefore, the decree-holders are required to submit the execution petition for getting the relief, for which the decree-holders already paid Court fees in the suit and the suit proceeding is closed without granting full relief to the plaintiffs decree-holders by leaving them to put life in the decree by launching execution under O.21, CPC. Despite knowing all difficulties in executon of the decrees, the O.21 has not been touched while amending the CPC in the year, 2000. Be it as it may be, we have to look into the compromise entered into by the parties in Execution Case No.22/96 dated 23rd October,

1997. The Condition No.1 of the agreement dated 23rd October, 1997 clearly provides that the the possession of the suit property shall be given to the decree-holders by 15th May, 1998. It is vehemently submitted that, thereafter, there is a line and that line makes a condition that the delivery of possession will be given by the decree-holders when the new school building will be ready. This argument has been advanced, ignoring the Condition No.5 which specifically provides that the school building will be constructed by end of the academic session of the school of the year, 1997-98. Othewise also, the alternate time given by the Condition No.1 for delivery of possession by the judgment-debtor to the decree-holders could not have been left for indefinite period or at the mercy of the judgment-debtor alone, who alone was to construct the school building. Even if the new building could not have been constructed without the help of the decree-holders, then, the judgment-debtors could have enforced the condition of getting benefit arising from agreement dated 23rd October, 1997 and it is clear that there is no material available on record which can show that the judgment-debtors tried to enforce the conditions of the agreement dated 23rd October, 1997 which is apparent from the facts and reasons given in the reply to the execution petition of the decree-holders. Be it as it may be, it is clear from the order

of the Executing Court that the Executing Court has not considered the complete Condition No.5 of the agreement dated 23rd October, 1997 and, therefore, the order of the Executing Court is perverse, because of the simple reason that both the parties are in agreement that the agreement was executed between the parties on 23rd October, 1997 and according to the non-petitioner itself, that is binding agreement and even the Executing Court itself clearly held that the agreement dated 23rd October, 1997 is binding and in compromise dated 23rd October, 1997, it is provided that the judgment debtor shall deliver the possession of the suit property to the decree holder by the end of academic session of the year, 1978 and that condition was ignored by the court below. Because of the above reason of non-consideration of Condition No.5 of the agreement dated 23rd October, 1997, the Executing Court wrongly held that the decree of possession cannot be executed till the other conditions are not complied with. To make it clear, it is mentioned in Condition No.1 that the decree-holders shall deliver possession by 15th May, 1998 or till new building is constructed and for construction of the new building, the time agreed by both the parties was upto the academic session of the year, 1997-98 and that period has already passed long ago before execution was launched. Therefore, the Executing Court could not have denied

the possession to the decree-holders on the ground of alleged non-compliance of other conditionsby the decree holder in the light of specific condition fixing time for delivery of possession in the agreement dated 23rd October, 1997, as referred to above.

The order of the court-below is further perverse because of the simple reason that the Executing Court was of the view that the time was given to the decree-holders to pay Rs.2,00,000/- by 15th November, 1997 through demand draft but the decree holder gave cheque of Rs.2,00,000/- in place of paying it by Demand Draft and, therefore, it is not a valid tender of the amount. While declaring so, the Executing Court has not considered any of the facts, by which the conduct of the petitioners decree-holders can be condemned. It is not the case of the judgment-debtors that they refused to accept the cheque or they returned the cheque to the decree holder and the judgment-debtor demanded payment through demand draft. Not only this, it is not case of even the non-petitioner judgment-debtor that because of this lapse, the agreement has been breached by the plaintiffs decree-holders and, therefore, the judgment-debtor is not bound to obey the conditions of the agreement dated 23rd October, 1997. A mere absolutely insignificant act of making payment through cheque in place by draft has been considered to be a grave fault of the decree-

holders and the court-below, while examining the fault of the non-petitioner observed that even if the place of construction of the new school building has been changed, then, that cannot be a fault of the non-petitioner, because of the reason that the representative of the decree-holders was given information and the members of the committee were present in the function of laying down the foundation stone. Therefore, there were two standards of judging the two parties which were before the Court.

The order of the Executing Court is self-contradictory, inasmuch as , because of the reason that the Executing Court specifically held that as per the terms of the agreement dated 23rd October, 1997, the decree-holders can get possession, only after construction of the new building, but that in the operative portion, gave liberty to the decree-holders to comply with the terms of the agreement dated 23rd October, 1997 and, in case, the judgment-debtor fails to comply with the conditions of the agreement dated 23rd October, 1997, then the decree-holders were given liberty to execute the decree. If there was no time for constructing the new school building in the agreement dated 23rd October, 1997, then whether it was dependent upon the mere wish of the dominating party – the State who alone could

have constructed the new school building ? Other contradiction is that if the plaintiffs breached the condition as back as on 23rd October, 1997, then, that too, by not making payment of the amounts as provided under Condition No.4, whether the said time could have been extended by the Executing Court which if strictly understood in the light of the stand taken by the non-petitioners, then that cannot be done without consent of both the parties and without recording compromise as provided under O.21, R.2, CPC. In the light of the judgment relied upon by the learned counsel for the non-petitioners in the case of Lakshmi Narayanan v. S.S.Pandian (AIR 2000 SC 2757) which itself provides that the decree can be compromised or altered or modified and that modification can be enforced when satisfaction is recorded by the Court under O.21, R.2, CPC. Admittedly, both the parties have not given their consent for extension of time or gave any concession in altering the condition of the compromise dated 23rd October, 1997, then the Executing Court could not have extended the time for compliance of conditions of payment by the decree holder to judgment debtor beyond the time given in compromise dated 23rd October, 1997.

It will be worthwhile to mention at this juncture that the

learned counsel for the petitioners, even after arguing the revision at length and submitting that the agreement dated 23rd October, 1997 has been violated by the non-petitioners, candidly submitted that the petitioners are still ready to pay Rupees 8 lacs, but they are not bound to comply with the conditions which the non-petitiones want to put upon the petitioners. The grievance of the petitioners is that despite the fact that, according to the non-petitioners, the scheme of 'Sahbhagita' itself has been abolised, still the petitioners are ready to pay Rs. 8 lacs, but the condition No.3 of the agreement dated 23rd October, 1997 should be followed strictly.

Learned counsel for the non-petitioners also submitted that the petitioners may pay Rupees 8 lacs, because that amount will be used for welafre of the entire schol as it will be used for only school purposes and if any condition which puts additional financial burden upon the petitioners is concerned, for that, it may be observed that the petitioners shall be liable to pay Rupees 8 lacs to the school and may not be bound to contribute upto 51% as demanded by letter dated 6th February, 1998. So far as name of the petitioners' ancestor is concerned, which was required to be given to the school, the non-petitioners has only mentioned in the order dated 6th February, 1998 that the

petitioner shall pay additional amount in case the school is upgraded and it is clearly provided in Condition No.6 of the order dated 6th February, 1998 that in case the petitioners will not pay the additional amount on upgradation of the school, the other donors may came forward and over that building, which wil be constructed by fresh donor, name of that donor or name given by that donor will be mentioned. It is also submitted that the petitioners' ancestors - Seth Badrinarain Balkishan Toshniwal will not be removed.

The offer given by the petitioners to the non-petitioners it is suffice to observe that even after the decision of the revision petition, the parties may sort out their dispute. This Court is not proposing now to alter the agreement dated 23rd October, 1997 or the decree dated 8th February, 1994, beause of the simple reason that the parties should also behave in proper manner if they want to take the benefit by their mutual consent and good senses. But, in this case, unfortunately, a litigation, which was started in 1981, that too, against the State and in which decree was passed in the year, 1994 and in a case where parties agreed for delivery of suit property to the decree holders by compromise dated 23rd October, 1997, neither school was constructed, nor decree-holders got the possession of the suit property and that has already burdened the Court,

apart from harrasment to the petitioners decree-holders. At this juncture, it will also be relevant to mention here that the conditions have been put by the non-petitioner State by the subsequent communication which were relied upon by the learned counsel for the petitioners, but I do not find any substnatial reason for making any further comment because of the reason that there is law which provided that the Court can take the note of subsequent events and may mould the relief, but, in this cae, without help of any document, this Court is of the view that the order of the court-below is absolutely perverse and has been passed without appreciating even the conditions of compromise dated 23rd October, 1997 which, according to the non-petitioner itself, is binding upon the non-petitioner which itself provides a time for vacating the suit premises. However, this Court can expect from the parties and in view of the contention of the learned counsel for the petitioners that the petitioners are still ready to pay Rs.8 lacs for welfare of the school and children, if that happens then it will be in large public interest, but so far as claim of the respondent for the amount on the basis of the compromise dated 23rd October, 1997 cannot be appreciated because of the simple reason that it is not case between two litigants who may be greedy for the premium or 'Pagri' for vacating the suit premises and to prohibit such

tendency, the law was enacted long ago by by making provision in State Rent Act against premium or 'Pagri'. In this case, the non-petitioner is not demanding any premium or 'Pagri' for any other purpose, but for welfare of the school and if one wants to take the benefit of some sort or the other, then that should be by humble person or the humble authority, not a autnority dictating its own terms.

In view of the above, the revision petition is allowed. The order of the Executing Court dated 23rd March, 2003 is set aside and it is held that the decree dated 8th February, 1994 is executable and decree-holder is bound to deliver the possession of the suit properties to the petitioners. However, since it is a matter relating to the school and about 300 students are in the school, therefore, this Court deems it proper that the decree under-challenge may not be executed till 30th June, 2008 and this concession is granted only on the condition of the non-petitioners submits undertaking before the Executing Court in writing from the competent authority that they shall hand over vacant possession of the suit property to the decree-holders by or before 1st July, 2008 and further that the judgment-debtor shall pay all arrears of rent if due under the decree to the petitioners or may deposit the amount in the Executing Court.

The judgment-debtor shall also pay the rent as awarded by the decree month by month by 15th day of each succeeding month of tenancy till possession is delivered to the decree holder. The decree-holders may give their Bank account particulars in writing to the learned counsel for the non-petitioners so that the judgment-debtor may deposit the amount in the Bank. The undertaking be submitted within a period of two months from today.

(PRAKASH TATIA), J.

Scd.